

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-13-1-5-00135-16
45-004-14-1-5-01154-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-451-006.000-003
Assessment Years: 2013 & 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 30, 2015. On January 20, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2014 appeal with the PTABOA. The PTABOA issued notice of its final determination on April 7, 2016. On May 25, 2016, Petitioner filed a Form 131 petition with the Board.
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on February 12, 2018. Neither the ALJ nor the Board inspected the property.
5. Petitioner James Nowacki was sworn and testified. Robert W. Metz and Gordana Bauhan, Lake County Appeal Officers, were sworn as witnesses for the Respondent.

Facts

6. The subject property is a vacant residential lot located at 3901 W. 27th Avenue in Gary.
7. The assessed value was \$1,500 for 2013 and 2014.
8. Petitioner requested an assessed value of \$600 for both years at issue.

Record

9. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1: GIS map,

Respondent Exhibit 1: Property record card (“PRC”),

Respondent Exhibit 2: Real Property Maintenance Report for 2012,

Respondent Exhibit 3: Real Property Maintenance Report for 2013,

Respondent Exhibit 4: Real Property Maintenance Report for 2014,

Respondent Exhibit 5: Overhead GIS map of the subject property,

Board Exhibit A: Form 131 petitions,

Board Exhibit B: Notices of Hearing,

Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that an assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.

11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

12. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered

by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value did not increase from 2012 to 2013. Petitioner has the burden of proof for 2013. The burden for 2014 depends on the outcome for 2013 and will be addressed in turn.

Contentions

15. Summary of Petitioner’s case:
 - a. This is a remnant lot—the State took part of the property when it widened Interstate 80/94. This lot is inaccessible and undevelopable. *Nowacki testimony*.
 - b. Petitioner testified that there are numerous errors on the property record card. The card shows the property has utilities, which it does not have. The card shows the roads are paved, which is true if one considers I-80/94 the paved road. The card also indicates the neighborhood is static. One could only consider the area static if one considered the most blighted area in the city, if not the state, as static. *Nowacki testimony: Resp’t Ex. 1*.
 - c. According to Petitioner, the assessment is outrageous because it equates to \$12,000 per acre for property that has no utilities, no access, and is undevelopable. The over-assessment goes to the point that every effort is made to alienate property owners from their property. *Nowacki testimony*.
16. Summary of Respondent’s case:
 - a. According to Respondent, the assessed value of the property was consistent for 2012, 2013, and 2014. *Bauhan testimony; Resp’t Ex. 1-4*.
 - b. The property is not assessed on an acreage basis. The assessed value was determined on a front foot basis. *Metz testimony*.

ANALYSIS

17. Petitioner failed to make a prima facie case for a reduction in the assessed values for the 2013 or the 2014 assessment years. The Board reached this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the Department

- of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) will often be probative. *Koostard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
- b. Regardless of the method used to prove a true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Petitioner presented no probative evidence to support the value he claimed. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 70 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Petitioner had the burden of proof for 2013 and failed to establish a prima facie case for a reduction in assessed value. Therefore, Petitioner had the burden of proof for the 2014 appeal. Petitioner offered the same evidence and arguments for both years and the outcome is the same.
 - e. Petitioner failed to make a prima facie case for changing the assessments. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

18. The Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 and 2014 values will not be changed.

ISSUED: April 27, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.